S.B. CIVIL MISC. APPEAL NO.1547/2007
(Smt.Aijee Bai & ors. Vs. M/S. D.J.Neelam Marbles Pvt.Ltd. & ors.)

Date of Order :: 26.07.2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.Rajesh Panwar for the appellant
Mr.Varun Gupta for the respondent No.2.

This appeal has been preferred by the claimants being aggrieved of the order dated 08.03.2007 passed by the Motor Accidents Claims Tribunal [Addl. District Judge, (Fast Track) No.6], Udaipur rejecting their application under Section 140 of the Motor Vehicles Act, 1988 seeking interim compensation towards no fault liability for the reason that at this stage, the facts about involvement of the vehicle in the accident and about the place of accident being a public place were not clear and that such questions could be decided only after appreciation of evidence.

At the outset learned counsel for the appellants submitted that in view of the fact that original claim case has since progressed further and evidence of the parties has been concluded, or is on the verge of completion, the appellants shall stand advised not to press this appeal any further so as to avoid likelihood of any delay in disposal of their main claim case. However, learned counsel submitted that the Tribunal while passing the order impugned has proceeded to rely on the testimony of another claimant Dinesh Kumar who has deposed in consolidated trial as AW-4 but he was neither a witness of present claimant-appellants nor they had any opportunity to cross-examine him; and the observations as made in the impugned order might cause prejudice to the

appellants while prosecuting their claim case and to that extent it may be clarified that such observations shall not be of any effect or import in the final decision of the case. Learned counsel Mr.Varun Gupta appearing for the respondent insurer in all fairness did not dispute on the proposition stated by the learned counsel for the appellant.

In the order impugned itself, the Tribunal has observed that "at this stage" position of involvement of the vehicle was not clear and it was also not clear if the place of incident was a public place or not and, therefore, has rejected the application for interim compensation. The observations as made in the impugned order with reference to the testimony of AW-4 Dinesh Kumar and other pieces of evidence could only be taken to be tentative and made only for the purpose of the application under Section 140 of the Act and related only with the questions relevant thereto and not beyond.

When the matter is to be finally decided by the Tribunal, any finding or observation as made in the impugned order, by its very nature, cannot have any direct effect or impact on final adjudication. Yet in the interest of justice, it is clarified that while deciding the main claim application, the Tribunal shall proceed on the merits of the case and the impugned order dated 08.03.2007 or any part thereof shall not have any implication on determination of any question involved in the case nor have any effect on the rights of the parties in the main case.

With the clarification aforesaid, the present appeal is dismissed as not pressed.

(DINESH MAHESHWARI), J.

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